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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL ROBERT MENSINGER,
JOHN MICHAEL DOBBLES, APURV U. KAMATH,
BEAT STADELMANN, DEBORAH M. RUPPERT,
NASSER SALAMATI, and RICHARD C. YANG

Appeal 2016-001089
Application 12/880,015[1]
Technology Center 3700

Before FRANCISCO C. PRATS, RACHEL H. TOWNSEND, and DEVON ZASTROW NEWMAN, *Administrative Patent Judges*.

NEWMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims to a method for customizing transmission of sensor information. The Examiner entered final rejections that the claims are directed to nonstatutory subject matter, are anticipated, and are obvious.

We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

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[1] Appellants identify the Real Party in Interest as DexCom, Inc. App. Br. 3.

STATEMENT OF THE CASE

Background

The Specification discloses "systems and methods for processing, transmitting and displaying data received from an analyte sensor, such as a glucose sensor." Spec. ¶ 2.

The Claims

Claims 1, 3, 5–8, 11–13, 24–26, 28, and 29 are on appeal.[2] Sole independent claim 1 is illustrative and reads as follows:

> 1. A method for customizing transmission of sensor information, the method comprising:
>
> measuring a concentration of an analyte in a host using a continuous analyte sensor;
>
> processing, using a processor module, a data stream associated with the analyte concentration measured by the continuous analyte sensor to generate analyte measurement information based on the data stream; and
>
> wirelessly transmitting, using a transmission module, the information according to predefined delivery options stored on a transmitting device incorporating the transmission module;
>
> wherein the delivery options are user defined using software downloaded onto a computing device, the software configuring the computing device to allow a user to define at least some of the delivery options by allowing user selection, using a user interface of the computing device, of (i) one or more of a plurality of different display devices defining display devices to which to transmit the information, (ii) one or more of a plurality of different alert conditions associated with diabetes defining alert conditions that trigger transmission the information upon the alert condition being met, and (iii) one or

[2] App. Br. 1.

> more of a plurality of different content requirements defining the information to be transmitted.

The Issues

The following rejections are before us to review:

Claims 1, 3, 5, 8, 11–13, 24–26, and 28[3] are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2.

Claims 1, 3, 5, 8, 11–13, 24–26, and 28 are rejected under 35 U.S.C. § 102(b) as being anticipated by Talbot.[4] *Id.* at 3.

Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Talbot and Rankers.[5] *Id.* at 6.

Claim 29 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Talbot and Shields.[6] *Id.*

NONSTATUTORY SUBJECT MATTER

The Examiner finds that:

> [t]he claim(s) is/are directed to the abstract idea of a mathematical formulation. The additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: generic computer structure for carrying out the idea on a computing device. Viewed as a whole, these additional claim element(s) do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the

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[3] Although the Examiner's Final Action (mailed December 5, 2014, "Final Act.") refers to pending claims 14, 16, 17, 19, and 20, those claims have been canceled. App. Br. 2 n. 1.

[4] US 2006/0025663, published Feb. 2, 2006 ("Talbot")

[5] US 2008/0300572, published Dec. 4, 2008 ("Rankers")

[6] US 2006/0051736, published Mar. 9, 2006 ("Shields")

> claim(s) amounts to significantly more than the abstract idea itself.

Final Act. 2. The Examiner acknowledges that the claims "encompass analyte measurements which include the structural elements of a sensor and processor in addition to the wireless transmission of data from the sensor," but notes that the "claims as a whole are directed towards the organization of the sensor data." Ans. 3. The Examiner further finds:

> the crux of what is claimed are delivery options that are input as software that dictate where data is sent, what alerts are associated with that data, and what content requirements are further associated as such. The sensor, processor, transmission module are merely generic structure for carrying out well-known operations within the art and are further generic to the art when the claimed subject matter is viewed as a whole.

Id.

The issue with respect to this rejection is whether a preponderance of the evidence supports the Examiner's conclusion that the subject matter of claim 1 is ineligible for patenting.

FACTUAL FINDINGS (FF)

FF1. The Specification discloses:

> Diabetes mellitus is a disorder in which the pancreas cannot create sufficient insulin (Type I or insulin dependent) and/or in which insulin is not effective (Type 2 or noninsulin dependent). In the diabetic state, the victim suffers from high blood sugar, which causes an array of physiological derangements (kidney failure, skin ulcers, or bleeding into the vitreous of the eye) associated with the deterioration of small blood vessels. A hypoglycemic reaction (low blood sugar) may be induced by an inadvertent overdose of insulin, or after a

> normal dose of insulin or glucose-lowering agent accompanied by extraordinary exercise or insufficient food intake.

Spec. ¶ 3.

FF2. The Specification discloses:

> Conventionally, a diabetic person carries a self-monitoring blood glucose (SMBG) monitor, which typically requires uncomfortable finger pricking methods. Due to the lack of comfort and convenience, a diabetic will normally only measure his or her glucose level two to four times per day. Unfortunately, these time intervals are spread so far apart that the diabetic will likely find out too late, sometimes incurring dangerous side effects, of a hyperglycemic or hypoglycemic condition. In fact, it is not only unlikely that a diabetic will take a timely SMBG value, but additionally the diabetic will not know if his blood glucose value is going up (higher) or down (lower) based on conventional methods.
>
> Consequently, a variety of non-invasive, transdermal (e.g., transcutaneous) and/or implantable electrochemical sensors are being developed for continuously detecting and/or quantifying blood glucose values. These devices generally transmit raw or minimally processed data for subsequent analysis at a remote device, which can include a display.

Spec. ¶¶ 4, 5.

FF3. The Specification discloses numerous methods and devices previously patented that are "suitable for use and in conjunction with aspects of the preferred embodiments." Spec. ¶¶ 203, 204.

FF4. The Specification discloses:

> a computerized method for customizing displayable sensor information that is transmitted to display devices comprises determining analyte concentration data associated with a host based at least on sensor data from a continuous analyte sensor associated with the host, generating displayable sensor information based on at least some of the analyte concentration

> data, storing at least some of the displayable sensor information on a storage device, wirelessly transmitting a first portion of the displayable sensor information to a first display device and wirelessly transmitting a second portion of the displayable sensor information to a second display device. In one embodiment the first portion of displayable sensor information is formatted for display on the first display device and the second portion of displayable sensor information is formatted for display on the second display device.
>
> a computer readable medium stores software code thereon, the software code configured for execution by one or more processors of a sensor electronics module configured for coupling to an analyte sensor that is attached to a host, wherein the software code, if executed by the one or more processors, causes the sensor electronics module to perform a method comprising determining analyte concentration data associated with a host based at least on sensor data from a continuous analyte sensor associated with the host, generating displayable sensor information based on at least some of the analyte concentration data, storing at least some of the displayable sensor information on a storage device, wirelessly transmitting a first portion of the displayable sensor information to a first display device, and wirelessly transmitting a second portion of the displayable sensor information to a second display device.

Spec. ¶¶ 7, 8.

FF5. The Specification discloses:

> The terms "sensor data", as used herein is a broad term and is to be given its ordinary and customary meaning to a person of ordinary skill in the art (and are not to be limited to a special or customized meaning), and furthermore refers without limitation to any data associated with a sensor, such as a continuous analyte sensor.

Spec. ¶ 36.

FF6. The Specification discloses:

> The terms "processor module," "microprocessor" and "processor" as used herein are broad terms and are to be given their ordinary and customary meaning to a person of ordinary skill in the art (and are not to be limited to a special or customized meaning), and furthermore refer without limitation to a computer system, state machine, and the like that performs arithmetic and logic operations using logic circuitry that responds to and processes the basic instructions that drive a computer.

Spec. ¶ 35.

FF7. The Specification discloses:

> The term "direct wireless communication" as used herein is a broad term, and is to be given its ordinary and customary meaning to a person of ordinary skill in the art (and is not to be limited to a special or customized meaning), and furthermore refers without limitation to a data transmission that goes from one device to another device without any intermediate data processing (e.g., data manipulation).

Spec. ¶ 67.

Principles of Law

> In *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, . . . 132 S.Ct. 1289 . . . (2012), the Supreme Court set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to a patent-ineligible concept. *Id.* at 1297. If the answer is yes, then we next consider the elements of each claim both individually and "as an ordered combination" to determine whether additional elements "transform the nature of the claim" into a patent-eligible application. *Id.* at 1298. The Supreme Court has described the second step of this analysis as a search for an "inventive concept"—i.e., an element or combination of elements that is "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself." *Id.* at 1294.

Ariosa Diagnostics v. Sequenom, Inc., 788 F.3d 1371, 1375 (Fed. Cir. 2015).

Analysis

We follow the analytical framework set forth by the Supreme Court in *Mayo* and applied by the Federal Circuit in *Ariosa*. Under this rubric, we agree with the Examiner that claim 1 sets forth a patent-ineligible abstract idea, specifically, "the processing of a data stream to generate analyte measurement information based on the data stream." Ans. 3.

In *Mayo*, the claim at issue was directed to

> A method of optimizing therapeutic efficacy for treatment of an immune-mediated gastrointestinal disorder, comprising:
>
> (a) administering a drug providing 6-thioguanine to a subject having said immune-mediated gastrointestinal disorder; and
>
> (b) determining the level of 6-thioguanine in said subject having said immune-mediated gastrointestinal disorder,
>
> wherein the level of 6-thioguanine less than about 230 pmol per $8x10^8$ red blood cells indicates a need to increase the amount of said drug subsequently administered to said subject and
>
> wherein the level of 6-thioguanine greater than about 400 pmol per $8x10^8$ red blood cells indicates a need to decrease the amount of said drug subsequently administered to said subject.

Mayo Collaborative Serv. v. Prometheus Lab., Inc., 132 S. Ct. 1289, 1295 (2012) (internal quotations omitted). The Supreme Court held that this claim was directed to patent-ineligible subject matter because it sought to claim a law of nature. *Id.* at 1305. The Court reasoned "[i]f a law of nature is not patentable, then neither is a process reciting a law of nature, unless that process has additional features that provide practical assurance that the process is more than a drafting effort designed to monopolize the law of nature itself." *Id.* at 1297.

In this case, we find none of the steps in claim 1 represent more than drafting effort. Instead, the claim is directed to the method of customizing transmission of the data obtained from the host.

The Specification discloses that diabetes mellitus is a disorder in which insulin is not produced or not correctly managed by the pancreas. FF1. For this reason, a diabetic must regularly monitor the level of glucose, an analyte, in his or her blood stream to allow the diabetic to avoid both the hypoglycemic and the diabetic state. FF1. The Specification discloses that methods for measurement of blood glucose values exist in the art, such as self-monitoring blood glucose (SMBG) monitors, and that additional methods are being developed for continuously detecting and/or quantifying blood glucose values. FF2. The Specification discloses no novel techniques or products used to detect blood glucose levels or other analytes, but rather refers to other devices suitable for use with its method. FF3.

The Specification discloses a "method for customizing transmission of sensor information" that can be viewed by display devices. FF4. The method claims 1) measuring the concentration of an analyte in a host with a continuous analyte sensor; 2) processing the data to obtain analyte measurement information; and 3) wirelessly transmitting the information "according to predefined delivery options" selected in advance by the user relating to alert conditions and data content requirements. *Id.* The data displayed is analyte concentration data from a host that is obtained "from a continuous analyte sensor associated with the host," but the sensor is not claimed or disclosed; "sensor data" is defined by the Specification as "a broad term . . . to be given its ordinary and customary meaning." FF5.

Once the sensor data is obtained, "displayable sensor information based on at least some" of the sensor data is 1) generated, 2) stored on a storage device, and 3) wirelessly transmitted in portions to first and second display devices. FF4. The software, processor module, and transmission module that perform these elements of the method are not claimed; the processor/processor module "performs arithmetic and logic operations using logic circuitry that responds to and processes the basic instructions that drive a computer" and "direct wireless communication" is described as "broad enough to include wireless communication that is transmitted through a router, a repeater, a telemetry receiver (e.g., configured to re-transmit the sensor information without additional algorithmic processing), and the like . . . without substantive transformation of the sensor information itself."[7] FF6, 7.

We find that step 1 of claim 1 is an observation of a natural phenomenon, namely receiving the concentration of an analyte in a host from a continuous analyte sensor. Steps 2–4 represent an abstract idea, "processing" the data stream to generate analyte measurement information through various disclosed computation methods[8] and transmitting the data to the user according to the user's pre-defined selections. Each step alone, and in combination with each other, encompasses a natural phenomenon and

---

[7] The claim term "transmission module" does not appear in the Specification.

[8] The Specification at paragraphs 37–43 discloses various methods by which the analyte data obtained by the sensor may be modified, for instance to "transform[] information from one state to another." Spec. ¶ 42. The claims do not include any of these data modification processes.

abstract idea. We, therefore, agree with the Examiner that claim 1 is drawn to patent ineligible subject matter. Ans. 3–6.

We note that our reviewing court has recently held system claims for detecting improper access of a patient's protected health information that include "a user interface" and a microprocessor to be patent ineligible abstract ideas. *FairWarning IP LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097 (Fed. Cir. 2016). The Court explained that "limiting the claims to the computer field does not alone transform them into a patent-eligible application." *See Alice*, 134 S. Ct. at 2358." *Id.* The Court held that "[t]he limitations added in FairWarning's system claims merely graft generic computer components onto otherwise-ineligible method claims. As such, these claims are patent ineligible along with claim 1 and its dependents." *Id.* at 1096; *see also In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 611 (Fed. Cir. 2016) (finding patent relating to a method and system for taking, transmitting, and organizing digital images that employed telephone unit and server unpatentable because they "merely provide a generic environment in which to carry out the abstract idea of classifying and storing digital images in an organized manner"); *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (finding patent relating to methods for performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results unpatentable because "merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes,

whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas").

Appellants argue the claims are not directed to an abstract concept because they "constitute specific steps, requiring the specific measurement of an analog physiological quantity, and further requiring specific steps to be performed with that measurement, including processing and transmitting in a specific way and with specific options." App. Br. 10. Appellants further argue the claim is not directed to a mathematical formula, a "long-prevalent and fundamental economic practice," or any of the method step claims "the Patent Office has identified as including a mathematical formula or relationship, e.g., in the Patent Office's Examples of Abstract Ideas, found at http://www. uspto.gov /patents/law *I* exam/ abstract idea_ examples. pdf." *Id.*

We do not find these arguments persuasive. The Specification supports the Examiner's position that the instant claims to receiving the concentration of an analyte in a host from a continuous analyte sensor, processing the data, and displaying the data according to user-selected preferences, attempt to claim a natural phenomenon and an abstract idea by appending them to conventional steps, specified at a high level of generality.

Appellants further argue that claim 1 does not unduly preempt the field because measurement of the concentration of an analyte could be measured "using a non-continuous analyte sensor" and information regarding the concentration could be transmitted "in a wired rather than a wireless fashion" and with other delivery options. App. Br. 10–11. Appellants' argument is not persuasive. "[T]he absence of complete

preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). "Where a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot." *Id.*

Having established that claim 1 seeks to patent an abstract concept, we next address step two of the *Mayo* framework, whether additional claim elements "transform the nature of the claim" into a patent-eligible application. *Mayo*, 132 S. Ct. at 1298.

Appellants argue that "the claims contain meaningful limitations that represent sufficiently inventive concepts, e.g., the requirement of measuring a concentration of an analyte, wirelessly transmitting the information according to predefined delivery options, and requiring the delivery options to include certain constituents" which should compel the conclusion that "the claim incudes elements drawn to significantly more than an abstract idea." *Id.* at 11.

Appellants further argue:

> the claims include specific technological limitations related to configuring a computing device to allow a user to define certain delivery options by allowing user selection, and such definition (and subsequent use of the predefined delivery options) results in an optimized and efficient way of transmitting information, which in turn provides significant operating advantages to computing environments because they can limit bandwidth usage, conserving computing cycles and battery power, as the delivery options are conveniently predefined and do not require re-definition each time a transmission is made. This aspect improves not only the claimed device but also the overall system for processing sensor data.

Id.

These arguments are not persuasive because, as explained above, "limiting the claims to the computer field does not alone transform them into a patent-eligible application." *FairWarning*, 839 F.3d at 1097. Furthermore, Appellants' argument that the user selections result in "an optimized and efficient way of transmitting information which in turn provides significant operating advantages to computing environments" is not persuasive because the claim does not require that the user select any optimizing option; instead, the software is configured to "allow a user to define at least some of the delivery options." This limitation is accordingly not part of the claim and cannot be considered an additional element for the purpose of patentability, as Appellants suggest. *See Super Guide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim.").

Appellants have not directed us to any part of the Specification that supports the argument that the computer function is optimized through selection of delivery options; rather, the delivery options are merely user-selected options for display that would occur after calculations were performed. *See, e.g.*, Spec. ¶ 150 (describing alerts "associated with one or more delivery options" that are communicated after the "sensor electronics module determines that an alert has triggered.")

Finally, Appellants argue their claim is similar to that found in *SiRF Technology Inc. v. International Trade Commission*, 601 F.3d 1319 (Fed. Circ. 2010), in which our reviewing Court upheld the patentability of the

claims on step two of the *Mayo* analysis. App. Br. 12. Specifically, Appellants argue the method claim 1 is similar to the subject matter in *SiRF Tech.*, in which

> the court found meaningful limitations placed upon the application of the claimed mathematical operations which showed that the claim was not directed to performing mathematical operations on a computer alone [because] the mathematical operations were applied to improve an existing technology (GPS) by improving the signal acquisition sensitivity of the receiver to extend the usefulness of the technology into other environments and providing the location information for display on the mobile device.

Id. While we agree with Appellants' characterization of the holding in *SiRF Tech.*, we are not persuaded, absent evidence and any support in the Specification, by Appellants' argument that "the claims at issue improve an existing technology (measuring and processing sensor data from a continuous glucose sensor) by arranging the delivery options in a particularly efficient way, and transmitting the data according to the defined delivery options." *Id.*

Claim 1 comprises the identification of a natural phenomenon, the concentration of an analyte in a subject, and the abstract idea of arranging the delivery options according to user-defined delivery options, and wirelessly transmitting the data accordingly. As *Mayo* instructs, "[s]imply appending conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract ideas cannot make those laws, phenomena, and ideas patentable." *Mayo Collaborative Serv.*, 132 S. Ct. at 1300. We find the limitations of claim 1 comprise the type of "conventional steps, specified at a high level of generality" that the Supreme Court has

held cannot confer patentability upon a law of nature and is not separately patentable because it implements the claimed method on a computer, which cannot transform the system into a patent eligible application. *FairWarning*, 839 F.3d at 1097.

Conclusion of Law

The evidence of record supports the Examiner's conclusion that claim 1 is directed toward non-statutory subject matter. Claims 5, 8, 11–13, 24–26, and 28 were not argued separately and therefore fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

ANTICIPATION

The Examiner has rejected claims 1, 3, 5, 8, 11–13, 24–26, and 28 as anticipated by Talbot. Final Act. 3. The Examiner finds that Talbot and Appellants both disclose:

> measuring a glucose concentration in a host using a continuous analyte sensor and processing it to create sensor data, wirelessly transmitting using the sensor module the sensor data to according to delivery options stored on the transmitting device according to delivery options that are defined using software on a computing device that permits the user to define options via a user interface where the options include a plurality of display devices to which to send the information.

Id. (citations omitted). Accordingly, the Examiner concludes Talbot teaches the subject matter of claim 1. *Id.*

Issue

Does the preponderance of evidence on this record support the Examiner's finding that Talbot teaches Appellants' claimed invention?

FACTUAL FINDINGS

FF8. Talbot discloses "wired connections between a sensor" and one or more devices, including "a user interface . . . and . . . one or more auxiliary devices. . . . [T]he sensor 100 measures a physiological characteristic, such as blood glucose concentration."

> The sensor may continuously measure a physiological characteristic, and then measurement updates would be displayed periodically on one or more devices. The sensor measurements may be real-time, and thus would be displayed as soon as the measurement is available. Alternatively, more than one measurement may be collected before a measurement is displayed. The measurements also may be stored until all measurements are taken and then displayed. The measurement may also be delayed before it is displayed.

Talbot ¶¶ 63, 64.

FF9. Talbot discloses:

> The user interface processor may transfer sensor measurements from the measurement memory to the output device. The user interface processor may also accept inputs from the input device. If the sensor includes a memory, the user interface may send parameters from the inputs to the sensor for storage in the memory. The inputs may include one or more of certain setup parameters, which it may be possible to change later but may be fixed: one or more high thresholds, one or more low thresholds, one or more trend rates, alarm acknowledge, minimum time between alarms, snooze duration, sensor serial number, codes, identification numbers (ID), password, user name, patient identification, reference measurements, and the like. The user interface processor may also tell the output device what to do including one or more of the following: . . . display thresholds, activate an alarm, display a message such as an alarm message . . .

Id. ¶ 92.

FF10. Talbot discloses:

[S]ensor electronics 120 may include a mechanism for wireless communication 1205, such as a radio frequency (RF) transmitter or transceiver, or an infrared (IR) transmitter or transceiver, light emitting diode (LED), sonic transmitter such as a speaker, and the like. Sensor electronics that include wireless communication capability are a subset of all sensor electronics and are referred to as wireless sensor electronics. . . .

The sensor wireless communication mechanism may be a processor that handles the communication protocol and manages transferring information in and out of the reference memory and the measurement memory. . . . Additionally, the sensor wireless communication mechanism may be a processor that evaluates the calibrated measurements according to user defined settings and sends results of the evaluation to the user interface. For example, the user may set an alarm threshold, which is sent to be stored in a memory in the sensor electronics. . . .

The alarms may function even when the sensor and sensor electronics are disconnected from the user interface and/or patient monitor. In this way, the patient will be warned if he/she becomes hyperglycemic or hypoglycemic, even when not connected to the user interface and/or patient monitor. For example, the sensor electronics may be coupled to an alarm. As discussed above, an alarm threshold may be stored in a memory in the sensor electronics. If a calibrated measurement exceeds the alarm threshold, the alarm coupled to the sensor electronics may be activated. . . .

User defined parameters such as alarm thresholds, minimum time between alarms, alarm snooze time, trend alarm thresholds, patient ID, one or more identifying codes, a password, and the like may be sent from the user interface to the sensor electronics and stored in memory in the sensor electronics. Thus, settings that are established for a particular patient are not lost when the patient is moved to a new location and the sensor electronics establishes communication with a second user interface. The user defined settings are sent the second user

> interface when communication is first established with sensor electronics. Each set of sensor electronics may have a unique ID, code, name, serial number, or the like, which is sent to the user interface so that the user interface can identify which sensor electronics it is communicating with. The unique ID for a sensor electronics may be required to be entered into a user interface before the user interface will recognize communications from a sensor electronics. Thus, if a user interface detects communication from more than one sensor electronics, then user interface can determine which signal to respond to based on the unique ID contained in the communications. Furthermore, the user interface and/or auxiliary devices may have one or more unique IDs so that each device, user interface, and sensor electronics can determine whether to accept communications from each other. For example, a patient monitor may be programmed to accept communications from a user interface or sensor electronics as long as the communication includes a unique ID representing a particular sensor.

Talbot ¶¶ 118–121.

Principles of Law

In considering the disclosure of a reference for anticipation, it is proper to take into account not only specific teachings of the reference but also the inferences that one skilled in the art would reasonably be expected to draw therefrom. *In re Preda*, 401 F.2d 825, 826 (CCPA 1968).

Analysis

We adopt the Examiner's findings of fact, reasoning on scope and content of Talbot, and conclusions set out in the Final Action and Answer. We conclude that the Examiner has established a prima facie case that the claims would have been anticipated by Talbot. FF8–10. Appellants have not produced evidence showing, or persuasively argued, that the Examiner's determinations are incorrect. Only those arguments made by Appellants in

the Briefs have been considered in this Decision. Arguments not presented in the Briefs are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

In order for arguments to be considered by the Board, our rules require that they be included in the Briefs. 37 C.F.R. § 41.37(c)(1)(vii) ("Any arguments or authorities not included in the brief or a reply brief . . . will be refused consideration by the Board, unless good cause is shown."); *see also* MPEP 1205.02 ("It is essential that the Board be provided with a brief fully stating the position of the appellant with respect to each ground of rejection presented for review in the appeal so that no search of the Record is required in order to determine that position. Thus, the brief should not incorporate or reference previous responses. 37 CFR 41.37(c)(1) requires that the brief contain specific items . . ."). Here, Appellants attempt to incorporate by reference their previous responses, including the "prior response filed September 25, 2017." App. Br. 13, 17. This does not comply with our rules, and we will not consider these previous responses.

We further note that our reviewing Court has held that "the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art." *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011); *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Here, Appellants have not argued the claims separately (*see* App. Br. 16). Accordingly, we focus our analysis on claim 1, and claims 3, 5, 8, 11–13, 24–26, and 28 stand or fall with that claim. 37 C.F.R. § 41.37 (c)(1)(iv).

Appellants argue that in all cases disclosed in Talbot, "IDs are used to determine whether a communication can be received; IDs are never used to determine where to send the communication. IDs are never used to allow user selection of one or a plurality of different display devices to which to transmit the information, as claimed." App. Br. 14–15. According to Appellants, Talbot differs from the claimed invention because Talbot does not disclose:

> wirelessly transmitting the information according to predefined delivery options, where the delivery options include one or more of a plurality of different display devices to which to transmit the information. The transmission in Talbot is completely agnostic to delivery options [or at least] silent on delivery options including devices to which the information should be transmitted.

Id. at 15.

The Examiner responds that the claims do not contain limitations "that limit the scope of the claims to only directing the data to a particular device. All that is required is that a user may define which device to transmit the information to. A display device's acceptance of the data by user selection clearly reads on this claim language." Ans. 6–7.

The Examiner has the better position. Claim 1 recites "wirelessly transmitting, using a transmission module, the information according to predefined delivery options" that are defined by a user to include "one or more of a plurality of different display devices defining display devices to which to transmit the information." App. Br. 19 (Claims App.). The Specification defines wireless communication to include "a data transmission that goes from one device to another device without any intermediate data processing." FF7. Talbot discloses a blood glucose

monitor with a "sensor wireless communication mechanism [that] may be a processor that handles the communication protocol and manages transferring information in and out of the reference memory and the measurement memory." FF10. Talbot describes receiving communications from a sensor electronics system and identifying the ID to "determine whether to accept communications from each other." *Id.* When the ID is recognized, the user interface processor "may also tell the output device what to do including one or more of the following: . . . display thresholds, activate an alarm, display a message such as an alarm message." FF9. These thresholds and alarm settings may be parameters that are input from the user interface to the sensor for storage in memory. *Id.* Thus, Talbot teaches "wirelessly transmitting, using a transmission module, the information according to predefined delivery options" that are defined by a user to include "one or more of a plurality of different display devices defining display devices to which to transmit the information."

Appellants next argue "there is no software in Talbot allowing user selection of one or more of a plurality of different display devices to which to transmit the information." App. Br. 15. Appellants argue Talbot "allow[s] receipt of data from a sensor associated with the ID, and not to indicate an ID to which sensor data should be transmitted." *Id.* For the reasons discussed above, we agree with the Examiner that claim 1 does not require identification of an ID for return transmission of wireless information, only that the devices accept information for display. Accordingly, this argument is not persuasive. We affirm the rejection of

anticipation of claim 1. Claims 3, 5, 8, 11–13, 24–26, and 28 fall with claim 1.

OBVIOUSNESS

With regard to both the rejection of claims 6 and 7 under 35 U.S.C. § 103 as obvious over Talbot in view of Rankers and the rejection of claim 29 under 35 U.S.C. § 103 as obvious over Talbot in view of Shields, Appellants rely on their arguments presented *supra* with respect to the Examiner's rejection of claims 1, 3, 5, 8, 11–13, 24–26, and 28 under 35 U.S.C. § 102(b). Because we affirm the claims as being anticipated by Talbot, we, for the same reasons, affirm the rejections under 35 U.S.C. § 103(a). *See In re Kalm*, 378 F.2d 959, 962 (1967) (Anticipation is the epitome of obviousness).

SUMMARY

We affirm the rejection of claims 1, 3, 5, 8, 11–13, 24–26, and 28 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

We affirm the rejection of claims 1, 3, 5, 8, 11–13, 24–26, and 28 under 35 U.S.C. § 102(b) as being anticipated by Talbot.

We affirm the rejection of claims 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Talbot and Rankers.

We affirm the rejection of claim 29 under 35 U.S.C. § 103(a) as being unpatentable over Talbot and Shields.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED